eBay Inc. v. Digital Point Solutions, Inc. et al
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EXHIBIT 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY INC., Plaintiff, v. DIGITAL POINT SOLUTIONS, INC., SHAWN HOGAN, KESSLER'S FLYING CIRCUS, THUNDERWOOD HOLDINGS, INC., TODD DUNNING, DUNNING ENTERPRISE, INC., BRIAN DUNNING, BRIANDUNNING.COM, and DOES 1 - 20, Defendants.	Case No. C 08-4052 JF **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT DIGITAL POINT SOLUTIONS, INC. (Nos. 1-34)**

Plaintiff eBay Inc. ("eBay") in accordance with Fed. R. Civ. P. 34, propounds the following document requests on Defendant Digital Point Solutions, Inc. ("DPS").

eBay requests that DPS produce the documents and things requested herein within 30 days from the date of service hereof at the offices of O'Melveny & Myers, LLP, Two Embarcadero Center, 28th Floor, San Francisco, California 94111, or at such other location as counsel for the parties may agree.

These discovery requests are deemed continuing. If DPS discovers documents responsive to any of these requests after their initial production, DPS is required to produce said documents as soon as practicable after their discovery. eBay reserves the right to amend, supplement and revise these requests.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions are to be considered applicable with respect to each request for production of documents contained herein:

1. "DPS" shall mean Digital Point Solutions, Inc., and each of its successor, predecessor, and related entities, including, without limitation, its subsidiaries, parent corporations, divisions, assigns, and any officers, directors, agents, employees, representatives, attorneys, or other persons or entities acting on its behalf, collectively, in any combination, or singly, whichever is broader.

2. "eBay" shall mean plaintiff eBay Inc., www.ebay.com, all of eBay's internationally operated websites, and any and all divisions, subdivisions, departments or subsidiaries of eBay.

3. "Commission Junction" shall mean any and all parent organizations, divisions, subdivisions, departments or subsidiaries of Commission Junction.

4. "Affiliate Marketing Program" shall mean any program by which a company engages third parties (affiliates) to engage in marketing efforts on its behalf.

5. "Document" is used in the broadest possible sense and shall mean, without limitation, every writing or record of every type and description that is in your possession, custody, or control, whether an original or copy, in whatever form, and includes, but is not limited to, correspondence, files, drafts, term sheets, transcripts, minutes, memoranda, telegrams, telexes, stenographic and handwritten notes, studies, analyses, publications, books, pamphlets, pictures, photographs, films, video tapes, audio tapes, purchase orders, invoices, computer disks and printouts, drawings, diagrams, blueprints, affidavits, expense records, financial reports, journals, logs, diaries, calendars, voice recordings, tapes, maps, reports, surveys, charts, numbers or statistical computations, and every draft or copy

thereof, whether signed or unsigned

6. "Communication" shall mean conversations, correspondence, telephone calls, meetings, or any transmission of information from one person to one or more persons.

7. "Related to," "relating to," "regarding," or "reflecting" shall mean identifying, mentioning, describing, discussing, memorializing, consisting of, evidencing, depicting, evaluating, commenting upon, or in any way concerning or regarding.

8. Documents in the custody or possession of DPS's counsel are deemed to be in the custody, possession or control of DPS.

9. All documents requested shall be produced in the same file or organizational environment in which they are maintained. For example, a document that is part of a file, docket or other grouping should be physically produced together with all other documents from said file, docket or other grouping responsive to said request, in the same order or manner of arrangement as the original.

10. In the event that any document responsive to the following document requests has been destroyed, otherwise disposed of, or no longer in the party's control or custody, that document is to be identified by author, addressee, date, subject matter, number of pages, attachments or appendices, all persons to whom it was distributed, shown or explained, date and manner of destruction or other disposition, and persons destroying or disposing of the document.

11. All documents or information not produced in response to these requests by reason of a claim of privilege or otherwise, shall be included in a log that identifies with respect to each document or information, the date, author, recipient, copyees, subject matter, and the specific grounds for withholding the document or information from production.

12. If DPS contends that any discovery request is objectionable in whole or in part, DPS shall state with particularity each objection, the basis for it, and the categories of information and documents to which the objections applies, and DPS shall respond to

the document request insofar as it is not deemed objectionable.

13. If DPS finds the meaning of any term in any discovery request unclear, DPS shall assume a reasonable meaning, state what the assumed meaning is, and respond to the request according to the assumed meaning.

14. The words "and" and "or" shall be construed in the conjunctive or disjunctive, whichever makes the request more inclusive.

15. The term "including" means "including, but not limited to."

16. As used herein, "all," "any," "each," or "every" means "all, each and every."

17. "User" shall mean anyone who uses a computer or internet service.

18. "Aliases" shall mean any string of characters used to identify a User within an online system, including chat rooms, blogs, listservs, Usenet newsgroups, file sharing systems or bulletin board systems. Aliases shall further encompass any screen name, user name, user id, moniker or nickname used to identify as User within an online system.

19. "Internet Forum" shall mean any method or facility for publication of content or communication among Users that is accessed or used via the Internet or other computer network including, but not limited to, message and bulletin boards, blogs, Usenet newsgroups, chatrooms, IRC channels or listservs.

20. The use of the singular shall be deemed to include the plural and the use of the plural shall be deemed to include the singular.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents relating to eBay, including all agreements, terms of service and terms and conditions.

REQUEST FOR PRODUCTION NO. 2:

All documents relating to, or Communications with, eBay or any current or former employee of eBay.

REQUEST FOR PRODUCTION NO. 3:

All documents relating to payment of commissions or other revenue obtained by DPS through participation in, interaction with or manipulation of eBay's Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to eBay's Affiliate Marketing Program, including, but not limited to, all methods and technologies used by DPS to obtain revenue from, manipulate or otherwise interact with, eBay's Affiliate Marketing Program, including, but not limited to, all software, source code, Javascript, and HTML code.

REQUEST FOR PRODUCTION NO. 5:

All documents relating to advertisements for eBay used, or purported to be used, on any website or ad network that directed or referred Users to eBay as part of eBay's Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 6:

All documents reflecting the number of Users who allegedly clicked on an advertisement for eBay used, or purported to be used, by DPS to direct or refer Users to eBay as part of eBay's Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 7:

All documents relating to methods or techniques intended to, or causing, a User's browser to load any eBay webpage, webpage content or data therefrom.

REQUEST FOR PRODUCTION NO. 8:

All documents sufficient to identify all advertising networks, advertising syndication services or websites used or purportedly used by DPS to advertise or promote eBay or to interact in any way with eBay or eBay's Affiliate Marketing Programs.

REQUEST FOR PRODUCTION NO. 9:

All documents sufficient to identify all Affiliate Marketing Programs, not including eBay's Affiliate Marketing Program, with whom DPS obtained revenue or otherwise interacted.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to and/or describing methods and techniques used by any other Affiliate Marketing Program that DPS interacted with, participated in or manipulated.

REQUEST FOR PRODUCTION NO. 11:

All documents sufficient to identify the source of any technology, technique or method used by DPS to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 12:

All documents sufficient to identify any individuals, groups, books, manuals or other materials consulted by DPS while developing any technology, technique or method used by DPS to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to Commission Junction, including all agreements, terms of service and terms and conditions.

REQUEST FOR PRODUCTION NO. 14:

All documents relating to, or Communications with, Commission Junction or any current or former employee of Commission Junction.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to, or Communications with, Kessler's Flying Circus, Thunderwood Holdings, Inc., Dunning Enterprise, Inc., or briandunning.com.

REQUEST FOR PRODUCTION NO. 16:

All Communications with Shawn Hogan, Todd Dunning or Brian Dunning.

REQUEST FOR PRODUCTION NO. 17:

All documents relating to, or Communications with, Rachael Hughes, or any companies or entities owned, controlled, affiliated with or used by Rachael Hughes, relating to eBay's Affiliate Marketing Program including, but not limited to, any agreements with Rachael Hughes and company and any technology transferred to or from Rachael Hughes and company.

REQUEST FOR PRODUCTION NO. 18:

All documents sufficient to describe all phone numbers, email addresses, web pages, instant messenger or mail accounts and social network accounts maintained, formerly maintained or registered to DPS.

REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to identify any Aliases used by DPS in any Internet Forum at or within which DPS discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Program, or any other Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to identify any Internet Forum at or within which DPS discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Programs, or any other Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

REQUEST FOR PRODUCTION NO. 21:

Documents sufficient to identify all internet service providers (ISPs) and IP addresses used by DPS.

REQUEST FOR PRODUCTION NO. 22:

Documents sufficient to identify all computers, servers, electronic data storage and hosting companies, entities, or facilities used by DPS.

REQUEST FOR PRODUCTION NO. 23:

Documents sufficient to identify any entity used or hired to maintain or restore electronic data or systems relating to DPS's participation in, manipulation of or interaction with eBay's Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 24:

Documents sufficient to identify software used to clean, reformat or erase hard-drives used by DPS, or any equipment owned, used or maintained by DPS.

REQUEST FOR PRODUCTION NO. 25:

All documents sufficient to identify all business entities or fictitious business names currently or formerly maintained by DPS.

REQUEST FOR PRODUCTION NO. 26:

All documents relating to the incorporation of DPS.

REQUEST FOR PRODUCTION NO. 27:

All documents filed by DPS with any Secretary of State.

REQUEST FOR PRODUCTION NO. 28:

Documents sufficient to show the structure and organization of DPS and all companies or other entities owned or controlled by DPS that were involved in or interacted with any Affiliate Marketing Program.

REQUEST FOR PRODUCTION NO. 29:

Documents sufficient to identify all employees, contractors or temporary employees of DPS, their dates of employment, duties, salary and any other compensation.

REQUEST FOR PRODUCTION NO. 30:

All documents constituting DPS's annual, quarterly and monthly audited, compiled, reviewed or unaudited financial statements, including all income statements and balance sheets of DPS.

REQUEST FOR PRODUCTION NO. 31:

All documents sufficient to identify all assets and financial accounts (including those outside of the United States) maintained or formerly maintained by DPS.

REQUEST FOR PRODUCTION NO. 32:

Documents constituting DPS's corporate tax returns for the years 2003 to the present.

REQUEST FOR PRODUCTION NO. 33:

All documents relating to the transfer or assumption of any liability by DPS.

REQUEST FOR PRODUCTION NO. 34:

All documents relating to any insurance policies relevant to this action.

Dated: January 22, 2009

O'MELVENY & MYERS LLP

By: [signature]

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